IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6626 of 1988

with
CIVIL APPLICAITON NO. 10962 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JYOTISH G THAKORE

Versus

BANK OF INDIA

Appearance:

MR Devesh Bhatt for the petitioner
RULE NOT RECD BACK for Respondent No. 1
RULE SERVED for Respondent No. 3
MR Chudgar for Mr KS NANAVATI for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 27 /12/2000

CAV JUDGMENT:

1. This petition is directed against the order dated 18.8.1987 whereby the petitioner's services as an officer of Bank of India have been terminated after holding a disciplinary inquiry against him. The appeal preferred by the petitioner under the Banking Service Regulations has also been dismissed on28.12.1987. The petitioner then preferred a review petition. The same has also been dismissed on 7.6.1988.

2. In the charge sheet issued against him on 26.12.1985, the allegations against him are that while he was posted at Paldi branch on 29.3.1982, he knowingly accepted forged signatures of Smt. Sharda Nagindas Dalal appearing on the reverse of Double Benefit Deposit (`DBD') receipts Nos. 19/146 and 19/149 by way of discharge while verifying the same for the purpose of loan against the aforesaid DBD from Paldi Branch . As a result, loan of Rs. 26,110/- was sanctioned in the name of Sharda Nagindas Dalal against the loan document bearing forged signatures of the said customer. The petitioner got this loan disbursed in cash and received the cash and thereby defrauded the bank fund to the tune of Rs. 26,110/-. The petitioner did this in collusion with Mr. A.C. Dalal who was the ten Manager of the Paldi Branch. He managed to surreptitiously remove from the custody of Paldi branch the DBD receipt Nos. 19/146 and 19/149 standing in the name of Sharda Nagindas Dalal. He then wilfully allowed double financing on the aforesaid DBD bearing forged signatures of Sharda Nagindas Dalal by way of discharge on the reverse by sanctioning loan of Rs. 26,110/- on Khambhat branch on 4.9.1982. Thereafter, the petitioner arranged to disburse the loan sanctioned by means of two uncrossed demand drafts drawn on Paldi Branch and thus favoured Sharda Nagindas Dalal and Shri N.P.,Shah in gross violation of the bank's norms. He thus enabled Mr. A. C. Dalal, in conspiracy with him, to receive cash against these demand drafts from Paldi Branch.

3. The Inquiry Officer, after recording evidence, held the petitioner guilty of the charges and consequently major penalty of dismissal from services was imposed upon him. Appeal and Review petition preferred by him have also been dismissed.

4. Learned counsel appearing for the petitioner, in the grounds urged in the petition, has mainly assailed the disciplinary action on the ground that report of inquiry was not supplied to the petitioner before imposing penalty. Decision of this court reported in

M.J.Ninama vs. Post Master General, Ahmedabad, 1984 GLH 800 was relied . Learned counsel very fairly submits that this ground of alleged illegality in holding of inquiry by non-supply of inquiry report before imposition of penalty, no longer survives in view of the larger bench decision of the Supreme court in Managing Director, ECIL vs. B.Karunakar,AIR 1994 SC 1074. The Supreme court has held that mere non-supply of inquiry report before imposition of punishment would not necessarily vitiate the whole inquiry unless serious prejudice is shown to have been caused to the petitioner. In the event of non-supply of inquiry report, it would be open to the court to supply a copy of the inquiry report and hear the petitioner on the alleged prejudice caused by non-supply of such inquiry report. In the instant case, a copy of the inquiry report was supplied simultaneously with the order of imposition of penalty. The petitioner preferred the appeal against his dismissal and ,therefore, at the time of appeal, a copy of the inquiry report was made available to him which he tried to challenge before the appellate4 authority and then before the reviewing authority. Non-supply of inquiry report,therefore, before imposition of penalty has not caused any prejudice to the petitioner.

5. Learned counsel then made some feeble attempt to assail the finding of the inquiry officer. I refuse to enter into the factual aspect of the inquiry report as it is not open to me to reappreciate the evidence led against the petitioner before the inquiry officer and come to a different finding. There is overwhelming evidence against the petitioner of his involvement in making use of DBD receipts and getting sanctioned loan twice on them from Paldi and Khambhat branches. The charges levelled against him are serious. Punishment of dismissal from service is well merited.

6. The petitioner has filed civil application No. 10962 of 2000 in which he seeks a direction from this court that after dismissal of his review petition, Mercy Petition filed by him be considered by the Bank. Learned counsel for the petitioner states that in the Mercy Petition, the petitioner has made a mention of several departmental inquiries against other officers of the bank for similar charges in which, instead of extreme punishment of removal from services, lesser punishment has been imposed. Prayer is made before me that I should direct the Bank to reconsider the petitioner's case on quantum of punishment in comparison with cases of other officers whose names have been mentioned in the Mercy Petition.

7. Such a request made on behalf of the petitioner cannot be acceded to. There are no details before me as to whether cases of other officers like M/s M.A.Kadri, M.V.Vaishnav and P.C.Anjaria were similar to the case of the petitioner.It is most unlikely that same or similar charges would have been levelled against them. Each departmental inquiry for the alleged misconduct has to be dealt with on the facts of each case and no precedence or parallel can be drawn. It is not possible for this court to issue any direction to the Bank that the Mercy Petition preferred by the petitioner should be considered when his appeal and review petition have already been rejected and he has approached this court by invoking writ jurisdiction.

8. A mention has been made of some criminal case, without giving details, that Special Judge (CBI), Ahmedabad has not found the petitioner guilty of the charge levelled against him of having received any cash. In the absence of any further details of that criminal case, it cannot be held that the petitioner has been punished on the same charge for which he was acquitted by the criminal court.

9. After going through the record of the disciplinary inquiry, I find that the petitioner has been found guilty of a very serious charge and the Bank cannot be directed to reconsider his case.

Consequently, the petition fails and is dismissed, but in the circumstances, I make no order as to costs. No orders are passed on the civil application and it stands disposed of. Rule is discharged.

(D.M. Dharmadhikari, C.J.)

parekh